IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.655 OF 2006

Shri Sharadkumar M. Lunawat ...Appellant

v/s

Shri Madhukar G. Ghodke and ors. ...Respondents

Mr Abhaykumar Apte for Appellant.

Mr H.S. Dandekar for Respondent No.2.

CORAM : D.K. DESHMUKH J.

DATE : 27TH JULY 2007.

P.C. :-

1. This appeal is filed by the original plaintiff. The plaintiff had filed a suit claiming declaration that he has title to immovable property. He had purchased that property from defendant No.1 - Madhukar G. Ghodke. Both the Courts below have found that there was a suit filed by defendant No.2 against defendant No.1 claiming a permanent injunction on the ground that the defendant No.2 has title to the property. In that suit, a finding has been recorded, which has become final, that the defendant No.2 has title to the property. Both the Courts below have found that the plaintiff is a person claiming through defendant No.1 and therefore in view of the provisions of section 11 of C.P.C., the finding recorded by the Court in the suit between defendant No.1 and defendant No.2 operate as res judicata in a suit filed by the plaintiff because he is claiming through defendant No.1. When this position was pointed out to the learned counsel appearing for appellant, he submitted that the finding does not operate as res judicata because he is not a person claiming through defendant No.1, the only reason he gave is that he is purchaser without notice and the reason why he says that he is purchaser without

notice is that in the revenue record, entry about sale deed in favour of defendant No.2 was not made. Assuming that the plaintiff was purchaser without notice, then also the defendant No.1 could not have passed any title to the property to him because the defendant No.1 did not have any title to the property. In any case, for deciding whether the plaintiff is the person claiming through defendant No.1 who has purchased the property without notice or with notice is totally irrelevant. Admittedly, the plaintiff has purchased the property from defendant No.1, therefore the defendant No.1 is vendor who was a party to the earlier suit. Therefore, for the purpose of section 11 of C.P.C., the plaintiff would be a person claiming through defendant No.1. I do not find any error in both the orders passed by the Courts below. No substantial question of law arises. Appeal is rejected. The plaintiff is directed to pay as and by way of cost Rs.5,000/- to the original defendant No.2.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.